

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-06**

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**SANTA FE DISCOUNT CRUISE PARKING, INC. d/b/a EZ  
CRUISE PARKING; LIGHTHOUSE PARKING, INC.; and  
SYLVIA ROBLEDO d/b/a 81<sup>ST</sup> DOLPHIN PARKING**

**v.**

**THE BOARD OF TRUSTEES OF THE GALVESTON  
WHARVES and THE GALVESTON PORT FACILITIES  
CORPORATION**

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**RESPONDENTS THE GALVESTON WHARVES AND THE GALVESTON PORT  
FACILITIES CORPORATION's PROPOSED FINDINGS OF FACT**

The Board of Trustees of the Galveston Wharves ("Wharves") and the Galveston Port Facilities Corporation ("GPFC") (collectively "Respondents"). Pursuant to the Scheduling Order dated January 14, 2015 and 46 C.F.R. 502.221, hereby submit this Respondents' Proposed Findings of Fact. In addition to Respondents' Proposed Findings of Fact, pursuant to the above-cited Procedural Order, Respondents' simultaneously file their Brief and an Appendix containing the evidence upon which Respondents' Proposed Findings of Fact are based.

1. The Wharves is a separate utility and body politic created by the City of Galveston pursuant to Article XII of the Galveston City Charter and Chapter 54 of the Texas Transportation Code. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).

2. The Wharves is managed by a seven-member Board of Trustees, which is appointed by the Galveston City Council. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).
3. In contrast to other Ports, such as the nearby Port of Houston Authority, the Wharves does not levy ad valorem (property) taxes to help subsidize its operations and financial requirements. Affidavit of Michael Mierzwa at ¶ 5 (Resp. App. Tab 75 at p. 002070).
4. The Wharves relies solely on revenues, grants, bank loans and bond debt to fund its operations and infrastructure improvements. *Id.*
5. The Wharves does not generate enough funds from these sources to cover all needed repairs and improvements; thus, it must prioritize and do what it can with the funds it has.
6. GPFC is a legal hybrid - a "local government corporation" authorized by Texas state law pursuant to Subchapter D, Chapter 431 of the Texas Transportation Code. Tex. Transp. Code Sec. Sec. 431.108 (Resp. App. Tab 73 at p.001950).
7. Local government corporations are authorized to be created to aid one or more units of local government to accomplish any governmental purpose of those local governments. *Id.* at §431.101(a).
8. The Wharves is entitled to any income generated by GPFC that is not needed to pay GPFC's expenses or obligations. *See Id.* at §431.107 (Resp. App. Tab 72 at p. 001949); GPFC Articles of Incorporation at art. XII. (Comp. App. Tab 15 at p.287)
9. GPFC was created to facilitate the financing, construction and operation of the Galveston Island Cruise Terminals. Affidavit of Michael Mierzwa at ¶ 9 (Resp. App. Tab 75 at p. 002071).

10. GPFC's financial information is reported on a consolidated basis in the Wharves' financial statements because their activities are so inter-related that doing otherwise would be materially misleading. Affidavit of Mark Murchison at ¶ 9 (Resp. Aff. 77 at p. 002083); Affidavit of Jeffery Compton (Resp. App. Tab 103 at p. 002756); Rebuttal Expert Report of Jeffery Compton, p. 4, ¶ 19 (Resp. App. Tab 7 at p.404); Wharves—2009 Comprehensive Annual Financial Report at BOT\_014303 (Resp. Tab 12 App.1005); Wharves—2010 Comprehensive Annual Financial Report at BOT\_013986 (Resp. Tab 13 App.\_1077\_); Wharves—2011 Comprehensive Annual Financial Report at BOT\_013901 (Resp. Tab 14 App.1093); Wharves—2012 Comprehensive Annual Financial Report at BOT\_ 014464 (Resp. Tab 15 App.001251); Wharves—2013 Comprehensive Annual Financial Report at BOT\_014552 (Resp. App. Tab 16 at p. 001339); Wharves—2014 Comprehensive Annual Financial Report at p. 3 (Resp. App. Tab 77 at p. 002113).
11. GPFC has never issued a Tariff. Affidavit of Michael Mierzwa at ¶ 10 (Resp. App. Tab 75 at p. 002071); Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 77 at p. 002081).
12. GPFC has never billed or collected Access Fees to Complainants or anyone else. Affidavit of Michael Mierzwa at ¶ 11 (Resp. App. Tab 75 at p. 002017); Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 77 at p. 002081). *See generally*, Commodore Access Fees (BOT 015921 – BOT 15950) (Comp. App. Tab 46 at p.771), County Inn Access Fees (BOT 015951 – BOT 15982) (Comp. App. Tab 47 at p.801), Marriott Access Fees (BOT 015983 – BOT 16004) (Comp. App. Tab 48 at p.833), Fertitta Access Fees (BOT 016196 – BOT 16262) (Comp. App. Tab 49 at p.855), Galveston Beach Hotel Access Fees (BOT 01626 3 – BOT 16273) (Comp. App. Tab 50 at p.922),

**Hampton Inn Access Fees (BOT 016274 – BOT 16321) (Comp. App. Tab 51 at p.933),  
Holiday Inn Access Fees (BOT 016322 – BOT 16379) (Comp. App. Tab 52 at p.982),  
Holiday Inn (Sunspreet Resort) Access Fees (BOT 016380 – BOT 16441) (Comp. App.  
Tab 53 at p.1039), Galvez Hotel Access Fees (BOT 016442 – BOT 16557) (Comp. App.  
Tab 54 at p.1101), Inn at the Waterpark Access Fees (BOT 016558 – BOT 16568)  
(Comp. App. Tab 55 at p.1217), Island Breeze Shuttle Access Fees (BOT 016569 – BOT  
16579) (Comp. App. Tab 56 at p.1228), LaQuinta Hotel Access Fees (BOT 016580 –  
BOT 16686) (Comp. App. Tab 57 at p.1239), Moody Gardens Access Fees (BOT  
016798 – BOT 16916) (Comp. App. Tab 58 at p.1346), San Luis Hotel Access Fees  
(BOT 016922 – BOT 17038) (Comp. App. Tab 59 at p.1465), Tremont Hotel Access  
Fees (BOT 017039 – BOT 17144) (Comp. App. Tab 60 at p.1582), The Woodlands  
Access Fees (BOT 017180 – BOT 17185) (Comp. App. Tab 61 at p.1688), AAA  
Corporation Access Fees (BOT 017186 – BOT 17190) (Comp. App. Tab 62 at  
p.1694), Abiding Limo Access Fees (BOT 017191 – BOT 17193) (Comp. App. Tab 63  
at p.1699), Action Limo Access Fees (BOT 017194 – BOT 17201) (Comp. App. Tab 64  
at p.1702), AFC Corporate Transportation Access Fees (BOT 017202 – BOT 17205)  
(Comp. App. Tab 65 at p.1710), AIM Limo Access Fees (BOT 017206 – BOT  
17210) (Comp. App. Tab 66 at p.1714), Airport Transportation Access Fees (BOT  
017211 – BOT 17212) (Comp. App. Tab 67 at p.1719), American Standard Limo  
Access Fees (BOT 017213 – BOT 17214) (Comp. App. Tab 68 at p.1721),  
American Transport Access Fees (BOT 017215 – BOT 17222) (Comp. App. Tab 69  
at p.1723), Avanti Transport Access Fees (BOT 017223 – BOT 17227) (Comp. App.  
Tab 70 at p.1731), Best Limo Access Fees (BOT 017228 – BOT 17230) (Comp.**

App. Tab 71 at p.1736), Big Star Custom Coach Access Fees (BOT 017233 – 172236) (Comp. App. Tab 72 at p.1739), Blackhorse Limo Access Fees (BOT 017233 – BOT 17236) (Comp. App. Tab 73 at p.1741), Black Tie Limo Access Fees (BOT 017237 – BOT 17239) (Comp. App. Tab 74 at p.1745), C&S Executive Transport Access Fees (BOT 017240 – BOT 17243) (Comp. App. Tab 75 at p.1748), Carey Worldwide Services, Inc. Access Fees (BOT 017244 – BOT 17247) (Comp. App. Tab 76 at p.1752), Cheap Town Car Limo Access Fees (BOT 017248 – BOT 17251) (Comp. App. Tab 77 at p.1756), Cherry Limo Transportation Access Fees (BOT 017252 – BOT 17254) (Comp. App. Tab 78 at p.1760), Clark's Travel Access Fees (BOT 017255 – BOT 17257) (Comp. App. Tab 79 at p.1763), Clear Lake Shuttle Bus Access Fees (BOT 017258 – BOT 17277) (Comp. App. Tab 80 at p.1766), Colony Limo Access Fees (BOT 017278 – BOT 17279) (Comp. App. Tab 81 at p.1786), Corporate Limo Access Fees (BOT 017280 – BOT 172281) (Comp. App. Tab 82 at p.1788), Cowtown Charters Access Fees (BOT 017282 – BOT 17292) (Comp. App. Tab 83 at p.1790), Daisy Tours & Conventions Access Fees (BOT 017293 – BOT 17296) (Comp. App. Tab 84 at p.1801), Devine Towncar & Limo Access Fees (BOT 017297 – BOT 17298) (Comp. App. Tab 85 at p.1805), Distinct Class Limo Access Fees (BOT 017299 – BOT 17303) (Comp. App. Tab 86 at p.1807), Enterprise Rent-A-Car Access Fees (BOT 017304 – BOT 17307) (Comp. App. Tab 87 at p.1812), Envoy Executive Limo Access Fees (BOT 017308 – BOT 17310) (Comp. App. Tab 88 at p.1816), Executive Transportation Access Fees (BOT 017311 – BOT 17313) (Comp. App. Tab 89 at p.1819), Extreme Elegance Access Fees (BOT 017314 – BOT 17316) (Comp. App. Tab 90 at p.1822), Finesse Transportation Access Fees (BOT 017317 – BOT 17318)

(Comp. App. Tab 91 at p.1825), First Class Access Fees (BOT 017319 – BOT 17322) (Comp. App. Tab 92 at p.1827), Galveston Limo Access Fees (BOT 017323 – BOT 17336) (Comp. App. Tab 93 at p.1831), Garcia Garcia Access Fees (BOT 017337 – BOT 17338) (Comp. App. Tab 94 at p.1845), Gaten Adventures Access Fees (BOT 017339 – BOT 17340) (Comp. App. Tab 95 at p.1847), Gemini Limo Access Fees (BOT 017341 – BOT 17343) (Comp. App. Tab 96 at p.1849), Gotta Go Trailways Access Fees (BOT 017344 – BOT 17346) (Comp. App. Tab 97 at p.1852), Gulf Coast Limo Services Access Fees (BOT 017347 – BOT 17348) (Comp. App. Tab 98 at p.1855), Houston Executive Limo Access Fees (BOT 017349 – BOT 17350) (Comp. App. Tab 99 at p.1857), Houston Express Limo Access Fees (BOT 017351 – BOT 17354) (Comp. App. Tab 100 at p.1859), J&J Tours Access Fees (BOT 017355 – BOT 17358) (Comp. App. Tab 101 at p.1863), Lonestar Executive Limo Access Fees (BOT 017359 – BOT 17362) (Comp. App. Tab 102 at p.1867), Lone Star Access Fees (BOT 017363 – BOT 17369) (Comp. App. Tab 103 at p.1871), Merlo's Limo's Access Fees (BOT 017370 – BOT 17377) (Comp. App. Tab 104 at p.1878), Onyx Limo Service Access Fees (BOT 017378 – BOT 17384) (Comp. App. Tab 105 at p.1886), Pride Limo Service Access Fees (BOT 017385 – BOT 17387) (Comp. App. Tab 106 at p.1893), Primavera Access Fees (BOT 017388 – BOT 17391) (Comp. App. Tab 107 at p.1896), R&R Partnership Access Fees (BOT 017392 – BOT 17396) (Comp. App. Tab 108 at p.1900), Reliance Limo & Town Car Access Fees (BOT 017397 – BOT 17399) (Comp. App. Tab 109 at p.1905), Royal Carriages Access Fees (BOT 017400 – BOT 17413) (Comp. App. Tab 110 at p.1908), South Houston Limo Access Fees (BOT 017414 – BOT 17419) (Comp. App. Tab 111 at p.1922), Select Corporate Access Fees

(BOT 017420 – BOT 17422) (Comp. App. Tab 112 at p.1928), Shif Limo Access Fees (BOT 017423 – BOT 17424) (Comp. App. Tab 113 at p.1931), Sierra Trailways Access Fees (BOT 017425 – BOT 17428) (Comp. App. Tab 114 at p.1933), SMZ Transportation Access Fees (BOT 017429 – BOT 17433) (Comp. App. Tab 115 at p.1937), Space Town Transportation Access Fees (BOT 017434 – BOT 17437) (Comp. App. Tab 116 at p.1942), Superior Limo Access Fees (BOT 017438 – BOT 17439) (Comp. App. Tab 117 at p.1946), Totally Texas Limo Access Fees (BOT 017440 – BOT 17445) (Comp. App. Tab 118 at p.1948), Town Car Limo Access Fees (BOT 017446 – BOT 17447) (Comp. App. Tab 119 at p.1954), Transgate Limo Access Fees (BOT 017448 – BOT 17452) (Comp. App. Tab 120 at p.1956), Transportation Unlimited Access Fees (BOT 017453 – BOT 17455) (Comp. App. Tab 121 at p.1961), Western Motorcoach, Inc. Access Fees (BOT 017456 – BOT 17457) (Comp. App. Tab 122 at p.1964), Wynn Coaches Access Fees (BOT 017458 – BOT 17461) (Comp. App. Tab 123 at p.1966), Z Limo Services Access Fees (BOT 017462 – BOT 17470) (Comp. App. Tab 124 at p.1970).

13. GPFC has a board of nine directors. Seven of the nine directors are the seven members of the Board of Trustees of the Galveston Wharves. Additionally, two non-Trustee directors are appointed by the City Council of the City of Galveston (the same body which appoints the Wharves Board of Trustees). GPFC Articles of Incorporation at Art. VI (Comp. App. Tab 15 at p.287).
14. GPFC has no employees. Affidavit of Mark Murchison at ¶ 4 (Resp. App. Tab 75 at p. 002081); Affidavit of Michael Mierzwa at ¶ 8 (Resp. App. Tab 75 at p. 002071).

15. The Wharves leased the Cruise Terminals (I and II) to GPFC. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p. 001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).
16. GPFC then entered a Management Agreement with the Wharves, under which the Wharves manages the Cruise Terminals for GPFC. *Id.*
17. GPFC enters agreements with Cruise Lines, such as Royal Caribbean Cruise Lines and Carnival Cruise Lines. *See generally*, Carnival Development Agreement, BOT\_017940-017964 (Resp. App. Tab 23 at p.001490); Royal Caribbean Cruises Construction Loan Agreement, BOT\_017916-017939 (Resp. App. Tab 22 at p.001466-001489).
18. Wharves employees perform GPFC's obligations thereunder, pursuant to the Management Agreement. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).
19. Both GPFC and the Wharves collect various sources of revenues, and are responsible for paying various categories of expenses, relating to the Cruise Terminals. Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442); Wharves—2006 Comprehensive Annual Financial Report at BOT 0140092 to 014158 (Resp. App. Tab 009 at p. 794-860); Wharves—2007 Comprehensive Annual Financial Report at BOT 014159-014197 (Resp. App. Tab 010 at p. 861- 899); Wharves—2008 Comprehensive



Annual Financial Report at BOT 014198 to 014269; (Resp. App. Tab 011 at p. 900 to 971); Wharves—2009 Comprehensive Annual Financial Report at BOT 014270 to 014351; (Resp. App. 012 at p. 972 to 1053); Wharves—2010 Comprehensive Annual Financial Report at BOT 013963 to 014047 (Resp. App. 013 at p. 1054 to 1138); Wharves—2011 Comprehensive Annual Financial Report at BOT 014352 to 014439 (Resp. App. 014 at p. 1139 to 1226); Wharves—2012 Comprehensive Annual Financial Report at BOT 014440 to 014527 (Resp. App. 015 at p. 1227 to 1314); Wharves—2013 Comprehensive Annual Financial Report at BOT 014528 to 014615 (Resp. App. 016 at p. 1315 to 1402); Wharves—2014 Comprehensive Annual Financial Report at p. 77 (Resp. App. 002089).

20. Under the terms of GPFC's lease with the Wharves, any net income attributable to GPFC is ultimately transferred to the Wharves. Lease and Development Agreement—Cruise Terminal No. I, at BOT\_018035-018036 (Resp. App. Tab 18 at p.001405-001406); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018056-018057 (Resp. App. Tab 19 at p.001426-001427).
21. The Wharves operates a cruise terminal complex on Galveston Island which consists of two terminals (I and II) (hereinafter sometimes collectively called the "Cruise Terminal"). Lease and Development Agreement—Cruise Terminal No. I, BOT\_018034-018054 (Resp. App. Tab 18 at p.001404-001424); Lease and Development Agreement—Cruise Terminal No. II, BOT\_018055-018072 (Resp. App. Tab 19 at p.001425-001442).
22. Cruise lines which have made calls to the Cruise Terminal since its opening include Carnival Cruise Lines, Royal Caribbean Cruise Lines, Celebrity Cruises, Princess Cruise Lines and Disney Cruise Lines. Wharves—2012 Comprehensive Annual Financial

Report at BOT\_014452 (Resp. App. Tab 15 at p.001239); Wharves—2014 Comprehensive Annual Financial Report at p. vi (Resp. App. Tab 77 at p.002102); Wharves—Cruise Calls for 2004-2011, EZC000031-000038 (Resp. App. Tab 91 at p. 002629-002636).

23. Early in its operations, these Cruise lines made more ship calls than now on an annual basis. Wharves—2008 Comprehensive Annual Financial Report at BOT\_ 014267 (Resp. App. Tab 11 at p.000969); Wharves—2009 Comprehensive Annual Financial Report at BOT\_014349 (Resp. App. Tab 12 at p.1051); Wharves—2010 Comprehensive Annual Financial Report at BOT\_014045 (Resp. Tab 13 App.001136); Wharves—2011 Comprehensive Annual Financial Report at BOT\_014437 (Resp. Tab 14 App.1139); Wharves—2012 Comprehensive Annual Financial Report at BOT\_014525 (Resp. Tab 15 App.001312); Wharves—2013 Comprehensive Annual Financial Report at BOT\_014613 (Resp. Tab 16 App. 001400); Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. Tab 77 at 002172).

24. Although the number of ship calls has declined, the Cruise lines have brought in and home ported larger cruise ships in Galveston, which has led to less ship calls without a corresponding reduction in passengers. *Id*

25. In 2006, 253 ship calls were recorded at the Cruise Terminal with 616,939 cruise passengers going through the terminal. Wharves—2008 Comprehensive Annual Financial Report at BOT\_ 014267 (Resp. App. Tab 11 at p. 969); Wharves—2009 Comprehensive Annual Financial Report at BOT\_014349 (Resp. App. Tab 12 at p.1051); Wharves—2010 Comprehensive Annual Financial Report at BOT\_014045 (Resp. App. Tab 13 at p.1136); Wharves—2011 Comprehensive Annual Financial Report at

- BOT\_014437 (Resp. App. Tab 14 at p.001224); Wharves—2012 Comprehensive Annual Financial Report at BOT\_014525 (Resp. App. Tab 15 at p. 1312); Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. Tab 77 at p. 002172).
26. In 2014, the ship call count was only 181 but 641,650 passengers were recorded. Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. Tab 77 at p. 002172).
27. When compared to other Ports, the Cruise Terminal ranks first in Texas, second in the Gulf of Mexico, fourth in the United States and nineteenth in the World in terms of annual cruise passenger traffic. "Galveston Cruise Terminal Expansion Moves Forward," *Houston Business Journal*, May 28, 2015, (Resp. App. Tab 048 at p.001754); Texas Department of Transportation, Texas Ports 2013-2014 Summary & Capital Campaign at 19 (found at [http://www.recenter.tamu.edu/mdata/pdf/Texas\\_Ports\\_Summary\\_2013-14.pdf](http://www.recenter.tamu.edu/mdata/pdf/Texas_Ports_Summary_2013-14.pdf)) (Resp. App. Tab 044 at p.001715).
28. Cruise passengers arrive at the Galveston Cruise Terminal in a variety of ways. Affidavit of Michael Mierzwa p. 7 (Resp. App. Tab 75 at p. 002071); Affidavit of Peter Simons (Resp. App. Tab 76 at p. 002078).
29. Some passengers park at the homes of nearby friends or family, who drop them off at the Cruise Terminal without compensation. Affidavit of Michael Mierzwa at ¶ 42 (Resp. App. Tab 78 at p. 002076).
30. Passengers who are dropped off at the Cruise Terminal by friends or family are not charged an access fee. *Id.*
31. Some passengers arrive on charter buses provided by the Cruise lines, as part of a "fly/cruise" package. *Id.* at ¶ 33.

32. Buses used under the Cruise Lines' "fly/cruise" programs are exempted from the Wharves' Tariff, and no access fees are paid. *Id.*
33. Some passengers come to Galveston prior to their actual cruise departure date, and stay as paying guests at a local hotel. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002620); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).
34. Many local hotels will allow paid guests to leave their vehicle without charge on hotel property during their cruise, and will provide (either directly, or using a third party shuttle service) a courtesy van to drop the passengers off at the terminal and pick them up when they return. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 43 at p. 001712); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).
35. Cruise passengers are a small percentage of these hotels' overall business. Affidavit of Steve Cunningham at ¶ 5 (Resp. App. Tab 88 at p. 002620); Hilton Galveston Island Cruise Ship Numbers April 2013- March 2014; BOT\_012979 (Resp. App. Tab 049 at p. 001757); Affidavit of Peter Simons at ¶ 5 (Resp. App. Tab 76 at p. 002079).
36. The Hilton on the Galveston Seawall from April 2013 to April 2014 rented fewer than three percent (3%) of its 60,000 rented and occupied rooms to cruise passengers. Hilton Galveston Island Cruise Ship Numbers April 2013- March 2014; BOT\_012979 (Resp. App. Tab 049 at p. 001757).

37. Five percent (5%) or less of the Hotel Galvez's guests utilize the Galvez's courtesy shuttle to access the Cruise Terminal. Affidavit of Steve Cunningham at ¶ 6 (Resp. App. Tab 88 at p. 002620).
38. Other cruise passengers arrive at the Cruise Terminal in their own vehicles. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App.041); EZ Cruise Website—FAQ (found at <http://ezcruisebooking.com/faqs/>) (Resp. App. Tab 042 at p. 001710); Depo of George Templeton at 43:15-43:22 (Resp. App. Tab 42 at p. 001710).
39. Passengers who drive to the Cruise Terminal can park their vehicles at lots owned and operated by the Wharves, or alternatively at lots operated by private owners such as Complainants. *Id.*
40. Passengers can make advance reservations for parking at any of the available parking facilities online, or else simply "pay at the door" on arrival, assuming there is available space. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App.041); EZ Cruise Website—FAQ (found at <http://ezcruisebooking.com/faqs/>) (Resp. App. Tab 042 at p.001710).
41. Both the Wharves and the private lots provide courtesy shuttle vans to take passengers to and from the Cruise Terminal, which is provided only to customers parking at the lot providing the service, and is provided at no additional charge. 81<sup>st</sup> Dolphin Advertisement, Robledo\_A\_000008 (Resp. App.041); EZ Cruise Website—FAQ (found at <http://ezcruisebooking.com/faqs/>) (Resp. App. Tab 042 at p.001710).
42. There are one or two parking lots located across Harborside Drive from the Cruise Terminal; their customers typically arrive at the Cruise Terminal on foot, carrying their

luggage with them. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 75 at p. 002074-002075).

43. A relatively small number of cruise passengers arrive by taxicab - either local taxis, or taxis from other locations, such as the Houston Airports; limousine; or other charter bus services (hereafter sometimes collectively referred to as "Transportation Services"), which are not part of the Cruise lines' Fly-Cruise packages. Affidavit of Michael Mierzwa at ¶ 41 (Resp. App. Tab 78 at p. 002076).
44. Hotels and the Transportation Services are not similarly situated to Complainants or the Wharves. *Id.* at ¶20.
45. Hotels and the Transportation Services are not in a direct competitive relationship with Complainants or the Wharves. Depo. of Sylvia Robledo at 50:17-51:2 (Resp. App. Tab 80 at p. 21).
46. The City of Galveston places restrictions on the maximum rate of fares that may be charged by taxicab companies that operate within its city limits. Affidavit of Michael Mierzwa at ¶ 46 (Resp. App. Tab 78 at p. 002077); Affidavit of Margaret Benham at ¶ 5 (Resp. App. Tab 89 at p. 002622); Chapter 35, Section 35.86 (Resp. App. Tab 40 at p. 001707).
47. Complainants, hotels, and the Transportation Services all offer unique services to cruise passengers. Depo. Of George Templeton at 70:5-70:13 (Resp. App. Tab 083 at p. 2538).
48. Cruise passengers who drive to Galveston on cruise day cannot park at a hotel, because they did not agree to stay there as paying guests. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002620); Galveston.com: Enhance Your Cruise with an

**Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).**

- 49. Other cruise passengers who drive to Galveston several days prior to cruise do so to extend their vacation a few days and visit local beaches on the Gulf of Mexico, tour local examples of historic 19th Century architecture, sample fresh Gulf Coast Seafood, or pursue other recreational activities. Affidavit of Steve Cunningham at ¶ 2 (Resp. App. Tab 88 at p. 002619); Wharves—2014 Comprehensive Annual Financial Report at p. 52 (Resp. App. 77 at p. 002172).**
- 50. Passengers that arrive several days before their cruise departure likely will not live out of their car in a parking lot while doing so, but will instead check into one of Galveston's many fine hotels for the pre-cruise portion of their vacation. Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p. 001712).**
- 51. These hotel customers will likely use a complimentary cruise parking and shuttle service if offered - having already paid to stay at the hotel first. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002620); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712).**
- 52. Taxicabs and limousines provide transportation services to the public in general. Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002621);**
- 53. Cruise passengers are, at best, an incidental portion of taxicabs and limousines' customer base. Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002621); Wharves—**

Monthly Board Meeting Minutes, February 27, 2006, at BOT\_000403 (Resp. App. Tab 024 at p.001515).

54. The only relevant businesses that limit the types of customers they serve are the private parking lots. That is, you do not have to be a cruise passenger to hire a taxicab or limousine or rent a room at a hotel; indeed most of their customers do not. Affidavit of Steve Cunningham at ¶4 (Resp. App. Tab 88 at p. 002620); Galveston.com: Enhance Your Cruise with an Overnight Stay Prior to Departure (found at <http://www.galveston.com/parkandcruise/>) (Resp. App. Tab 043 at p.001712); Affidavit of Babak Roodi at ¶ 3 (Resp. App. Tab 85 at p. 002621).
55. Virtually all of Complainants' customers are cruise passengers seeking to park their vehicles for the duration of their cruises. Depo of George Templeton at 24:9-24:19 (Resp. App. Tab 083 at p. 2514); Depo of Cynthia Tompkins at 101:8-101:11 (Resp. App. Tab 82 at p. 2485).
56. In 2003, the Wharves issued Tariff Circular No. 6, Item 111, which describes rules and regulations for all vehicles owned by commercial entities seeking to access the Cruise Terminal to drop off and pick up cruise passengers. Wharves – Tariff Circular No. 6 (Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 004 at p.000219).
57. Included in these regulations are fees required for accessing the terminal. *Id.*
58. All such commercial entities accessing the Cruise Terminal must purchase a decal for each vehicle. *Id.* at BOT\_017486-017487 (Resp. App. Tab 074 at p. 1951-2069).
59. To obtain the decal the owners or operators must show proof of insurance and add the Wharves and GPFC as additional insureds on their policies. Wharves – Tariff Circular



No. 6 (Item 111) revised September 22, 2014, at BOT\_017861-017862 (Resp. App. Tab 006 at p.000387).

60. With the exception of taxicab operators, these owners and operators must also pay an access fee for each time they access the Cruise Terminal to pick up or unload passengers. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.000387).

61. The Wharves cannot require cruise passengers to arrive at the Cruise Terminal in commercial vehicles that pay Access Fees. GALVESTON, TEX., CHARTER, art. XII, §§ 1-2 (Comp. App. Tab 12 at p.278).

62. From 2003 through August 15, 2006, the Wharves' Tariff provided that Complainants, other private parking lots, hotels and others covered therein were to pay Access Fees at the same rate -- A per trip. Wharves – Tariff Circular No. 6 (Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 001 at p.016); Affidavit of Michael Mierzwa at ¶ 12 (Resp. App. Tab 75 at p. 002017).

63. The Wharves did not charge or seek to collect this per trip access fee until 2005, when it advised all persons and companies obligated to pay access fees under its Tariff that it would, in fact, assess and collect Access Fees. Affidavit of Michael Mierzwa at ¶ 15 (Resp. App. Tab 75 at p. 002072); Steven M. Cernak notice to Port users, May 20, 2005, EZC\_A\_005577-5583 (Resp. App. Tab 050 at p.1758).

64. The Wharves' staff collected data regarding the number of times these users actually accessed the Cruise Terminal in 2005 and through June of 2006. Port Tariff Charges for the Year 2006 (Access Fee Study) (Comp. App. Tab 29 at p.532).

65. In 2005 and 2006 EZ Cruise used Galveston Limousine Co. as a contractor to provide complimentary shuttle service for its customers, because it did not own enough vehicles. Cynthia Hayes letter dated June 14, 2005, BOT\_010819-010831 (Resp. App. Tab 051 at p.1765); Depo. Of Cynthia Tompkins at 39:1-40:16 (Resp. App. Tab 082 at p.2474).
66. During 2005 Complainants collectively accessed the Cruise Terminal 7,701 times: EZ Cruise accessed 2,316 utilizing its own shuttles and an additional 4,146 times utilizing shuttles owned by Galveston Limo, and 81<sup>st</sup> Dolphin accessed the Cruise Terminal 1,239 times. Port Tariff Charges for the Year 2005, BOT\_010851 (Resp. App. Tab 058 at p.1790).
67. Complainant Lighthouse Parking did not access the Cruise Terminal in 2005. *Id.*
68. Collectively, all hotels that accessed the Cruise Terminal in 2005 accessed 8,488 times. *Id.*
69. In the first six months of 2006, Complainants collectively accessed the Cruise Terminal 5,693 times: EZ Cruise accessed 1,669 utilizing its own shuttles and an additional 1,297 times through the month of March utilizing shuttles owned by Galveston Limo, Lighthouse Parking accessed 1,423 times and 81<sup>st</sup> Dolphin accessed the Cruise Terminal 1,304 times. Port Tariff Charges for the Year 2006, BOT\_010846 (Comp. App. Tab 29 at p.532).
70. All thirteen hotels collectively accessed the Cruise Terminal 5,135 during the first six months of 2006. *Id.*
71. The three Complainants accessed the Cruise Terminal more times during the first six months of 2006 than all thirteen hotels combined. *Id.*

72. From January 2005 through August 2006, Complainants were invoiced for Access Fees on a per trip basis, but refused to pay the full amounts owed. Steven Cernak July 29, 2005, letter to EZ Cruise, BOT\_011064-011068 (Resp. App. Tab 052 at p.1768); Cynthia Hayes (Tompkins) October 15, 2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); R. Wayne Byrd August 16, 2006, letter to EZ Cruise, BOT\_010845 (Resp. App. Tab 056 at p.1787); Michael Mierzwa July 20, 2006, letter to EZ Cruise, BOT\_010816-010820 (Resp. App. Tab 054 at p.1774); Michael Mierzwa July 25, 2006, letter to Lighthouse Parking, BOT\_010832-010839 (Resp. App. Tab 055 at p.1779).
73. The Wharves continued to try to work with them to reach an agreement under which they would pay their Access Fees. Steven Cernak July 29, 2005, letter to EZ Cruise, BOT\_011064-011068 (Resp. App. Tab 052 at p.1768); Cynthia Hayes (Tompkins) October 15, 2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); R. Wayne Byrd August 16, 2006, letter to EZ Cruise, BOT\_010845 (Resp. App. Tab 056 at p.1787); Michael Mierzwa July 20, 2006, letter to EZ Cruise, BOT\_010816-010830 (Resp. App. Tab 054 at p.1774); Michael Mierzwa July 25, 2006, letter to Lighthouse Parking, BOT\_010832-010839 (Resp. App. Tab 055 at p.1779); Cynthia Hayes (Tompkins) June 14, 2005, letter to Wharves, BOT\_010819-010820 (Resp. App. Tab 051 at p.1765).
74. During discussions on this issue, Complainants complained that the Access Fees were too high, and could vary significantly from month to month. Cynthia Hayes (Tompkins) October 15, 2005, letter to Wharves, BOT\_010815 (Resp. App. Tab 053 at p.1773); Cynthia Hayes (Tompkins) June 14, 2005, letter to Wharves, BOT\_010819-010820 (Resp. App. Tab 051 at p.1765).

75. During discussions, Complainants asked to be treated differently from other users and pay some type of flat rate for unlimited access. Cindy Hayes letter dated June, 14, 2005, BOT\_010819 (Resp. App. Tab 051 at p.1765); Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773); Michael Mierzwa letter date July 20, 2006, BOT\_010816-010818 (Resp. App. Tab 054 at p.1774); Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 22); "Shuttle Diplomacy" Article in July 31, 2006, edition of The Daily News, EZC\_A\_001811-001813 (Resp. App. 047 at p. 1752); Depo. Of Sylvia Robledo at 63:2-63:4 (Resp. App. Tab 80 at p. 29).
76. In the Fall of 2005 EZ Cruise owner Cynthia Tompkins (formerly Cynthia Hayes) wrote to (then) Deputy Port Director Michael Mierzwa asking that EZ Cruise be charged an access fee of \$1,000 per month for unlimited access to the Cruise Terminal. Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773).
77. Complainants met with Wharves' staff on many occasions in late 2005 through June of 2006, still refusing to pay an access fee on a "per trip" basis. Cindy Hayes letter dated June, 14, 2005, BOT\_010819 (Resp. App. Tab 051 at p.1765); Cindy Hayes letter dated October 15, 2005, BOT\_010815 (Resp. App. Tab 053 at p.1773); Michael Mierzwa letter date July 20, 2006, BOT\_010816-010818 (Resp. App. Tab 054 at p.1174); Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 22); "Shuttle Diplomacy" Article in July 31, 2006, edition of The Daily News, EZC\_A\_001811-001813 (Resp. App. 047 at p. 1752).
78. After protracted negotiation, the Complainants and the Wharves staff agreed on a simple fee formula – the Complainants would be charged a flat dollar rate per month for each space in their lots used for cruise passenger parking. Wharves – Tariff Circular No. 6

(Item 111) revised November 14, 2003, at BOT\_017486-017491 (Resp. App. Tab 001 at p.016); Affidavit of Michael Mierzwa at ¶ 12 (Resp. App. Tab 78 at p. 002071); Affidavit of Michael Mierzwa at ¶ 18 (Resp. App. Tab 78 at p. 002072).

79. Ultimately, in 2006 the Wharves decided on a rate of \$8 per space per month. Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 22).

80. Complainants have admitted that the \$8 per space per month rate was a good "deal." Depo. of George Templeton at 40:12-40:25 (Resp. App. Tab 83 at p. 22).

81. This agreed upon rate was put into effect on August 15, 2006, and applied retroactively to January 1, 2005 - but only for these Complainants. Affidavit of Michael Mierzwa at ¶ 21 (Resp. App. Tab 78 at p. 002072).

82. During the same time period, the hotels and others assessed Access Fees paid the full amount due under the per-trip access fee. Commodore Access Fees (BOT 015921 – BOT 15950) (Comp. App. Tab 46 at p.771), County Inn Access Fees (BOT 015951 – BOT 15982) (Comp. App. Tab 47 at p.801), Marriott Access Fees (BOT 015983 – BOT 16004) (Comp. App. Tab 48 at p.833), Fertitta Access Fees (BOT 016196 – BOT 16262) (Comp. App. Tab 49 at p.855), Galveston Beach Hotel Access Fees (BOT 01626 3 – BOT 16273) (Comp. App. Tab 50 at p.922), Hampton Inn Access Fees (BOT 016274 – BOT 16321) (Comp. App. Tab 51 at p.933), Holiday Inn Access Fees (BOT 016322 – BOT 16379) (Comp. App. Tab 52 at p.982), Holiday Inn (Sunspreet Resort) Access Fees (BOT 016380 – BOT 16441) (Comp. App. Tab 53 at p.1039), Galvez Hotel Access Fees (BOT 016442 – BOT 16557) (Comp. App. Tab 54 at p.1101), Inn at the Waterpark Access Fees (BOT 016558 – BOT 16568) (Comp. App. Tab 55 at p.1217), Island Breeze Shuttle Access Fees (BOT 016569 – BOT 16579) (Comp. App. Tab 56 at

p.1228), LaQuinta Hotel Access Fees (BOT 016580 – BOT 16686) (Comp. App. Tab 57 at p.1239), Moody Gardens Access Fees (BOT 016798 – BOT 16916) (Comp. App. Tab 58 at p.1346), San Luis Hotel Access Fees (BOT 016922 – BOT 17038) (Comp. App. Tab 59 at p.1465), Tremont Hotel Access Fees (BOT 017039 – BOT 17144) (Comp. App. Tab 60 at p.1582).

83. The \$8.00 per space per month agreement resulted in significant savings for Complainants for fees assessed from January of 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton at ¶40 and Exhibits C1, C2 and C3 (Resp. App. Tab 103 at p. 2766, 2773-2775).
84. Because it would have paid \$87,930.00 in access fees under the \$10 per space system and only paid \$35,680.00 as part of the per-space assessment, EZ Cruise realized a savings of \$52,250.00 for the period of January 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—EZ Cruise, BOT\_016088 (Resp. App. Tab 032 at p.1607).
85. Because it would have paid \$14,230.00 in access fees under the \$10 per space system and only paid \$9,120.00 as part of the per-space assessment, Lighthouse realized a savings of \$5,110.00 for the period of January 2006 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—Lighthouse, BOT\_016688 (Resp. App. Tab 034 at p.1640).
86. Because it would have paid \$25,430.00 in access fees under the \$10 per space system and only paid \$11,520.00 as part of the per-space assessment, 81<sup>st</sup> Dolphin realized a savings

of \$13,910.00 for the period of January 2005 to June of 2006. Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.401); Affidavit of Jeffrey Compton (Resp. App. Tab 103 at p. 2766, 2773-2775); Invoices—81<sup>st</sup> Dolphin, BOT\_015797 (Resp. App. Tab 030 at p.1571).

87. The Wharves Board of Trustees approved the agreement between Complainants and Wharves staff, and the Tariff was modified to reflect that Complaints and other private parking lot owners would pay \$8 per space per month as "Off-Port Parking Users." Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_0017559-017565 (Resp. App. Tab 002 at p.89); Affidavit of Michael Mierzwa at ¶ 19 (Resp. App. Tab 78 at p. 002072).
88. One of the Trustees who voted for this change was Don Suderman. His wife owns a fifty percent (50%) interest in Complainant Lighthouse Parking, Inc. Depo of George Templeton at 48:13-49:16; Lighthouse Stock Purchase and Sale Agreement, L.T. 001142-001146 (Exhibit No. 43 of Deposition) (Resp. App. Tab 20 at p. 1443).
89. The 2006 Tariff revision also provided for increases based on the Consumer Price Index beginning on August 15, 2011. Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_0017561 (Resp. App. Tab 002 at p.091).
90. The Wharves did not implement this increase, pending an overall study of Cruise Terminal finances and access fees, which led so the 2014 changes to the Wharves' Tariff. Affidavit of Peter Simons at ¶ 3 (Resp. App. Tab 76; at p. 002078; Affidavit of Michael Mierzwa at ¶ 27 (Resp. App. Tab 75 at p. 002073).
91. From August 15, 2006, through October 1, 2014, the Access Fees charged to Complainants and other private parking lot owners did not change. Wharves – Tariff

Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_017561 (Resp. App. Tab 002 at p.091); Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).

92. Reducing the fee to an \$8 per space flat fee reduced EZ Cruise' access fees by 39.7% or \$6.00 per trip. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785).
93. Under the new \$8 per space per month tariff rate, EZ Cruise would only be charged \$2,560 per month. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785).
94. This would equate to a dollar savings of \$1,690 savings per month for EZ Cruise. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Affidavit of Jeffrey Compton at ¶ (Resp. App. Tab 103 at p. 2775); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.418).
95. Extended from August of 2006 to May of 2014, this savings was more than \$20,000 per year or approximately \$150,000 per year, before factoring the additional spaces added by EZ Cruise. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p.2785).
96. Lighthouse Parking with 195 spaces in 2006 and averaging 240 trips a month saved 35.0% in fees or approximately \$12,000 per year and \$90,000.00 since August of 2006, before its expansion. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.419).
97. 81<sup>st</sup> St. Dolphin with 120 spaces in 2006 and averaging 224 trips per month saved 57% in fees or approximately \$5,300 per year and over \$40,000.00 since August 2006, before its



increase in space allocation. Private Cruise Parking Lot Fee Analysis, BOT\_011054 (Resp. App. Tab 104 at p. 2785); Rebuttal Report of Jeffrey Compton (Resp. App. Tab 007 at p.420).

98. For others paying Access Fees on a per-trip basis, changes were made to the Tariff in 2007 to delineate per trip fees on the basis of the passenger capacity of the shuttle vans accessing the Cruise Terminals. Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).
99. Despite the change, the Wharves did not receive the benefit of the 2007 rate changes until after the 2013 -2014 review of cruise terminal access issues by Wharves staff disclosed an inadvertent failure to collect the higher amounts charged for larger buses and shuttle vans required by the amended Tariff. Affidavit of Mark Murchison at ¶ 23 (Resp. App. Tab 77 at p. 002086).
100. Specifically the employee responsible for counting vehicles accessing the Cruise Terminal apparently was not aware of the higher rates, and charged all such vehicles a \$10 access fee per trip regardless of size - in violation of the Tariff. As a result, some commercial users paying access fees on a per-trip basis were charged less than they should have been charged. This oversight was corrected in August 2014, when a new employee took over the position. Affidavit of Mark Murchison at ¶ 23 (Resp. App. Tab 77 at p. 002086).
101. The 2007 change did not affect the Access Fees which Complainants paid. Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167); Depo of George Templeton at 41:19-42:6 (Resp. App. Tab 83 at p. 23).

102. From August 1, 2006 through May of 2014 Complainants knew and were aware of the \$8 per space per month rate they were charged, while others paid a per trip fee. Wharves – Tariff Circular No. 6 (Item 111) revised August 28, 2006, at BOT\_017561 (Resp. App. Tab 002 at p.091; Wharves – Tariff Circular No. 6 (Item 111) revised December 17, 2007, at BOT\_017637 (Resp. App. Tab 003 at p.167).
103. From August 1, 2006 through May of 2014 Complainants never complained once that the rate they were being charged was unfair, discriminatory or prejudicial. Affidavit of Michael Mierzwa at ¶ 23 (Resp. App. Tab 78 at p. 002073); Email Correspondence from Jason Hayes to Bernie Curran, BOT\_011101-011102 (Resp. App. Tab 92 at p. 002637).
104. In late 2013, Wharves Staff proposed several revisions to Tariff Circular No. 6, which included an increase in the Access Fees paid by Complainants and other private parking lot owners, to \$9.14 per space, beginning in 2014. Affidavit of Michael Mierzwa at ¶ 28 (Resp. App. Tab 78 at p. 002074).
105. In 2013, the Board of Trustees approved other revisions, but deferred the Access Fee increase. *Id.*; Wharves—Monthly Board Meeting Minutes, November 21, 2013, BOT\_002739-002789 (Resp. App. Tab 93 at p. 002690-002740).
106. Although the Access Fee increase was deferred, the change was inadvertently included in actual revisions made to the Tariff in November 2013. Since the change was not formally approved by the Board of Trustees, it was not legally valid. When the error was discovered it was corrected. Affidavit of Michael Mierzwa at ¶ 28 (Resp. App. Tab 78 at p. 002074).
107. The Board of Trustees directed Wharves staff to conduct a complete review of Cruise Terminal finances and operations, including security, access gates, pedestrian traffic,

access by ground transportation companies, and develop a true picture of the financial condition and operation of the Cruise Terminal. Affidavit of Peter Simons at ¶ 3 (Resp. App. Tab 76 at p. 002078); Affidavit of Mark Murchison at ¶ 17 (Resp. App. Tab 75 at p. 002073); Affidavit of Michael Mierzwa at ¶ 27 (Resp. App. Tab 75 at p. 002073).

108. The study showed that the costs and expenses incurred by the Wharves and GPFC greatly exceeded their revenues attributable to the Cruise Terminal. Affidavit of Michael Mierzwa at ¶ 30; Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000085-000086 (Comp. App. Tab 25 at p.479-480).

109. Following completion of this study, Wharves staff recommended that the per-trip fee rate be increased. Affidavit of Michael Mierzwa at ¶ 30 (Resp. App. Tab 78 at p. 002074); Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000092 (Comp. App. Tab 25 at p.486); Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322).

110. The lower \$10 trip charge was indexed to the Consumer Price Index and rounded up to \$20. Wharves—CPI-U Calculation, BOT\_018097 (Resp. App. Tab 101 at p. 002754).

111. The higher trip charges for larger shuttle vans and buses were also increased. Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322).

112. Despite the per-trip fee rate increases, a significant deficit remained. Affidavit of Michael Mierzwa at ¶ 30 (Resp. App. Tab 78 at p. 002074); Board of Trustees—Regular Monthly Meeting Minutes, May 19, 2014, at BOT\_000092 (Comp. App. Tab 25 at p.486).

113. In order to close the financial gap, the per-space access fees for parking lot owners and operators was increased. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 78 at p. 002074); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).
114. The Wharves allocated approximately 68% of the remaining deficit, to itself, as it operated 68% of the parking lots servicing cruise passengers. Affidavit of Michael Mierzwa at ¶ 31 (Resp. App. Tab 77 at p. 002084); Access Fee Study Group Presentation (Comp. App. Tab 20 at p.438); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).
115. The Wharves also allocated to itself the parking spaces in private lots who did not pay Access fees, because they are in closer proximity to the Wharves, and their customers simply walk to the Cruise Terminal. *Id.*
116. The end result of the study was a \$28.88 per-space per-month Access Fee charge to private parking lots like Complainants'. Wharves – Tariff Circular No. 6 (Item 111) revised May 19, 2014, at BOT\_017793 (Resp. App. Tab 005 at p.322); Affidavit of Mark Murchison at ¶ 13 (Resp. App. Tab 77 at p. 002084).
117. On September 22, 2014, the Wharves retroactively rescinded the May 2014 Tariff rate increase for Off-Port Parking Users. Affidavit of Mark Murchison at ¶ 19 (Resp. App. Tab 77 at p. 002085).
118. With this rescission in September of 2014 all moneys collected under that Tariff were either refunded or, at the user's election, given a credit to apply for future billing. *Id.* at 20 (Resp. App. Tab 77 at p.002085-002086).
119. On September 22, 2014, the Tariff was again modified, and the "per space per month" method for calculating parking lot Access Fees was eliminated, effective October 1,

2014, and its place, all persons paying Access Fees now pay on a per-trip basis. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.391).

120. As of October 1, 2014, Complainants were charged on the exact same basis, \$20 per trip, as all other users. Wharves – Tariff Circular No. 6 (Item 111) revised September 22, 2014, at BOT\_017862 (Resp. App. Tab 006 at p.391); Affidavit of Michael Mierzwa at ¶ 32 (Resp. App. Tab 75 at p. 002075).

121. From 2006 until 2014, Wharves staff maintained regular contact with Complainants regarding the assessment of Access Fees. Affidavit of Mark Murchison at ¶ 6 (Resp. App. Tab 77 at p. 02082); Depo. S. Robledo at 67:6 – 68:3 (Resp. App. Tab 80 at p. 0002324-002325); Affidavit of Michael Mierzwa at ¶ 24 (Resp. App. Tab 75 at p. 002073); Email Correspondence between Mark Murchison and Charles Tompkins, October 27, 2012, BOT\_012650 (Resp. App. Tab 57 at p. 001788-001789); Email Correspondence from Jason Hayes to Bernie Curran, BOT\_011101-011102 (Resp. App. Tab 92 at p. 002637).

Dated: June 1, 2015

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed this document on this 1st day of June, 2015, and that a true and correct copy of the foregoing was served on all counsel of record *via* certified mail – return receipt requested and email, as indicated below:

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